
IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

TIMOTHY WAYNE PORTER,

Plaintiff,

v.

TINTIC SCHOOL DISTRICT et al.,

Defendants.

**MEMORANDUM DECISION
AND ORDER**

Case No. 2:10-cv-0909 CW

Judge Clark Waddoups

This matter is before the court on Defendants’¹ Motion to Dismiss and Plaintiff’s Motion to Amend Complaint. Defendants filed their motion to dismiss on November 22, 2010. Plaintiff filed his motion to amend on December 13, 2010. Rule 15 of the Federal Rules of Civil Procedure states, “A party may amend its pleading once *as a matter of course* within . . . 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier.”² Plaintiff filed his motion to amend twenty-one days after Defendants filed their motion. He included a proposed amended complaint. Because he filed the amended complaint within the time allotted under Rule 15, Porter did not need leave of court to do so. Thus, his amended complaint is properly before the court.

When an amended complaint is filed it supersedes the previous complaint. Defendants’

¹ The defendants in this matter are Tintic School District, Ron Barlow, the Current Tintic School District Superintendent, Estate of Mary Lou Draper, Board President Janice Boswell, Board Member Ron Bray, Kodey Hughes, and John Does I–II (collectively “Defendants”).

² Fed. R. Civ. P. 15(a)(1)(B) (2010) (emphasis added).

motion to dismiss the original complaint is therefore denied as moot. If Defendants choose to file a motion to dismiss the amended complaint, any applicable arguments made in their first motion to dismiss may be incorporated by reference.


ORDER

For the reasons stated above, the court DENIES AS MOOT Defendants' Motion to Dismiss.³ The court GRANTS Plaintiff's Motion to Amend Complaint.⁴ The court directs Plaintiff to re-file the proposed Amended Complaint so that it is a separate docket entry rather than an exhibit to his motion.

Because the court concluded the motions could be addressed on the briefs, it hereby strikes the hearing set for Thursday, June 2, 2011 at 3:30 p.m.

DATED this 31st day of May, 2011.

BY THE COURT:


Clark Waddoups
United States District Judge

³ Docket No. 4.

⁴ Docket No. 6.